

FRAUD AND ABUSE UNIT

Operations and Procedures Manual



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1. INTRODUCTION

In order to achieve the goals of reducing fraud and abuse, improving operational quality and ensuring the provision of high quality care in the State behavioral health system, the Arizona Department of Health Services (ADHS), Division of Behavioral Health Services (DBHS) established a comprehensive fraud and abuse compliance program. This program included the creation of the Fraud and Abuse Unit (FAU), which was given the charge of deterring and detecting fraud and abuse within DBHS, its contractors and subcontractors.

In accordance with the contractual requirements of DBHS with the Arizona Health Care Cost Containment System (AHCCCS), DBHS fraud and abuse compliance program includes the provisions outlined in 42 CFR 455.17 including a Compliance Plan, Compliance Officers, a Compliance Committee, training and education, communication, monitoring/auditing and written policies and procedures.

Any portion of this Operations and Procedures Manual may be altered or waived if the FAU Manager is directed to do so by the Compliance Committee Chair. The following sections describe the established operational procedures for the FAU including the oversight and maintenance of the DBHS Corporate Compliance Plan.

2. DBHS COMPLIANCE PLAN

The DBHS Corporate Compliance Plan is intended to be a systematic process aimed at ensuring that DBHS, its contractors and subcontractors comply with applicable laws, regulations, standards and contractual obligations. The Compliance Plan serves as a guiding document in the development, implementation, evaluation and maintenance of all related fraud and abuse operations and procedures, and it establishes a process for identifying and reducing risk and improving internal controls. See Attachment A for DBHS Corporate Compliance Plan.

3. COMPLIANCE COMMITTEE

The purpose of the DBHS Compliance Committee is to provide high-level oversight and direction for the fraud and abuse compliance program.

The Compliance Committee's responsibilities are:

- To understand DBHS fraud and abuse procedures and to provide this information to each functional area and its employees to insure effective communication and understanding regarding fraud and abuse detection and deterrence.
- To interface with the ADHS Director and Deputy Director in regards to DBHS fraud and abuse deterrence and detection efforts.
- To review the plan annually to assure that it is meeting the needs, requirements and contractual obligations of DBHS relating to fraud and abuse.

- Providing feedback to the FAU regarding emerging fraud and abuse trends and vulnerable areas in the behavioral health community.
- Reviewing relevant FAU investigative reports in order to become aware of audit findings and how those findings affect the functional areas and customers of the division.

The Compliance Committee's membership is made up of:

- Committee Chair – DBHS Chief Financial Officer (CFO)
- Committee Staff – DBHS Fraud and Abuse Unit Manager
- Committee Members – Management representatives from each functional area of DBHS.
 - Deputy Director
 - Chief Financial Officer
 - Consumer Rights Bureau Chief
 - Compliance Chief
 - Office of Program Support Manager
 - FAU Manager as staff to the Committee
 - Quality Management Operations Bureau Chief
 - Clinical and Recovery Services Chief

Meetings

The committee should meet as needed and the Committee Chair or the DBHS Deputy Director should call each meeting. There should be a standing quarterly meeting of the committee to review the plan and to discuss significant cases from the past period. It is recommended that the committee issue an annual report to the ADHS Director regarding the adequacy of the compliance program and any emerging trends in fraud and abuse in Arizona's behavioral health system and recommendations to address these trends. Each committee meeting will include an update from the Compliance Officer on cases opened, cases closed, cases referred, new trends and new vulnerable areas. Committee meeting agendas and notes will be maintained in the FAU files.

It is important to remember the sensitive nature of the information and topics the committee will be discussing and to assure that each member does not share information on investigations outside of the committee. In order for the FAU audits and investigations to be conducted properly and to maintain the integrity of any possible future civil or criminal actions taken against a subject, strict confidentiality must be maintained by the committee and any related DBHS employee.

4. FRAUD AND ABUSE UNIT

In order to facilitate the operational objectives of DBHS compliance program, the Fraud and Abuse Unit (FAU) was established. The FAU is charged with detecting and deterring fraud and abuse within DBHS and in training and assisting Tribal/Regional Behavioral Health Authorities'

(T/RBHA) Compliance Officers as they facilitate their own compliance programs. The FAU is comprised of a Unit Manager and two Compliance Auditors.

The FAU Manager reports directly to the CFO and acts as staff to the Compliance Committee. The FAU Manager is responsible for updating the compliance plan, creating and maintaining FAU procedures, assigning reviews and audits, reviewing, summarizing and reporting fraud and abuse statistics, liaison with AHCCCS/OPI (Office of Program Integrity), Department of Health and Human Services, Office of Inspector General, and the Arizona Attorney General's Office, providing fraud and abuse training to DBHS employees and T/RBHA Compliance Officers and conducting audits and investigations. The FAU Manager is the single point of contact for DBHS employees reporting fraud and abuse and for DBHS reporting fraud and abuse to an outside agency.

The desk review auditor conducts regular ongoing statistical analysis of CIS encounter data, tribal fee-for-service data and other data and information looking for trends or patterns that would indicate suspected fraud or abuse. These analyses result in regular reports to the FAU Manager. The FAU Manager summarizes these reports and provides them to the CFO and Compliance Committee. This auditor also conducts desk reviews of complaints and is fully cross-trained in field audit operations.

The field auditor conducts random and targeted field audits of T/RBHAs and providers based upon established audit programs and purpose-created audit programs. This auditor also conducts investigatory audits of providers that have been identified by DBHS in-house data as generating irregular encounter or billing activity. This auditor is fully cross-trained in desk review audit operations.

5. COMPLIANCE OFFICERS' MEETING

In order to facilitate fraud and abuse training and communication among the T/RBHA Compliance Officers, the FAU Manager will convene quarterly Compliance Officers' meetings. The Compliance Officers' meetings are intended to provide a forum for discussion of relevant fraud and abuse topics, emerging trends, changes in DBHS policy/contract as well as a setting for formal training on methods and techniques in deterring and detecting fraud and abuse.

This meeting will be scheduled for two hours each quarter and will be held at the DBHS building in Phoenix. All identified T/RBHA Compliance Officers and acting Compliance Officers are requested to attend in person. In the event a Compliance Officer cannot attend in person, they may appoint a designee to attend in their place.

Meetings will be scheduled and the Compliance Officers notified two months in advance for each meeting. For each scheduled meeting, the FAU Manager will prepare and distribute an agenda at least two weeks prior to the meeting date. All Compliance Officers are invited to contact the FAU to suggest items for discussion or to request presentations be placed on the agenda. All requests for items or presentations must be received by the FAU at least one month prior to the meeting date and must be approved by the FAU Manager for inclusion on the agenda. Agendas and meeting notes will be retained as part of the FAU administrative records.

6. T/RBHA COMPLIANCE OFFICERS AND COMPLIANCE PLANS

All T/RBHAs are required by contract to have a Corporate Compliance Officer and a Corporate Compliance Plan. The contracts state that any change of Compliance Officer is to result in DBHS being notified of the change including information regarding the new Compliance Officer and their contact information.

All T/RBHAs are to submit their Corporate Compliance Plan to the DBHS/FAU annually by October 1. The FAU will review and file these annual submissions in the FAU files and notify the assigned DBHS Contract Compliance Officer of their compliance with this requirement.

7. FRAUD AND ABUSE DEFINITIONS

For the purposes of the DBHS' compliance program, the DBHS' Compliance Plan and the FAU's operational activities, the following will be used as the definitions and elements for identifying fraud and abuse.

Fraud

"Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law." (42 CFR § 455.2)

Elements of Fraud:

- The act (evidence of wrongdoing).
- Knowledge and intent (willfully intended to commit act – generally evidenced by a pattern of wrongdoing).
- Benefit (some type of measurable benefit obtained from the act by the person committing the act).

Abuse

"Abuse means provider practices that are inconsistent with sound fiscal, business or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program." (42 CFR § 455.2)

Elements of Abuse:

- Inconsistency (pattern of not following known laws, rules, regulations, contracts or industry practices/procedures).

- Costs (unnecessary loss of money to a government program).
- Not necessary/does not meet standards (general disregard for professional or industry standards and practices).

Understanding Medicaid Fraud and Abuse:

The phrase “fraud and abuse” is used commonly when discussing corporate compliance programs in the world of Medicaid. The terms fraud and abuse are generally used together, as if they are interchangeable and essentially the same, but they are not. In order to effectively deter and detect fraud and abuse within Arizona’s public behavioral health system and to better enable auditors and investigators to perform their duties adequately, it is necessary to examine, define and understand what these terms mean and how they are different. The obvious and subtle differences between the terms fraud and abuse are critical in the determination of suspected fraud or abuse, the collection of evidence, the elements necessary to determine which statutes apply and, ultimately, the jurisdiction.

The terms fraud and abuse, as used in the Code of Federal Regulations, do not refer to specific offenses, but rather the nature of the statutes that can be used to prosecute or take action against a provider. If fraud were suspected, at least one of several Federal or State criminal statutes would need to be charged. The charges chosen would be based upon the facts and circumstances of the case and specific elements would need to be established in order to conduct a successful prosecution of the case.

If abuse were suspected, at least one of several federal or state statutes or rules would need to be charged or invoked. Based upon the statutes or rule chosen to charge the subject with, specific elements would need to be established in order to successfully obtain a civil judgment or monetary penalty or assessment.

The primary difference between fraud and abuse, as they relate to chargeable offenses, is the existence or ability to prove intent on the part of the suspect. In order to charge a fraudulent act it would normally require the ability to prove criminal intent. A lower level of intent or an absence of intent would normally lead investigators or prosecutors to pursue civil/administrative action based upon the abusive activity. See Attachment B.

8. SUSPECTED FRAUD AND ABUSE DEFINITION

For the purposes of the DBHS’ compliance program, the DBHS Compliance Plan and the FAU’s operational activities, the following will be used as the definition and criteria for determining suspected fraud and abuse.

ARS 36-2918.01 uses the language “suspected fraud or abuse.” This is the language that is used by DBHS in regards to their compliance program. DBHS defines suspected fraud or abuse as:

“Evidence or information that would lead a reasonable person to believe that fraud or abuse is occurring or has occurred. This would normally involve evidence of a material

loss or unnecessary expense, a pattern of occurrence and something to show intent to defraud or unsound business practices. An alternate phrase for ‘suspected fraud or abuse’ could be ‘reasonable belief of fraud or abuse’.”

9. DBHS SUSPECTED FRAUD OR ABUSE CRITERIA

DBHS is required to report all suspected fraud or abuse involving any Title 19/21 funds to AHCCCS within 10 business days of determination. All reports of suspected fraud or abuse from DBHS will be in writing and will be preceded by an e-mail or telephone call to AHCCCS/OPI. Any DBHS report of suspected fraud will be made based upon the findings of a FAU audit or review and will meet the FAU criteria for determining suspected fraud or abuse. The totality of the findings and the circumstances will be examined before making any determination regarding suspected fraud or abuse.

The FAU will report all suspected fraud to AHCCCS/OPI for Title 19/21 funds, or the appropriate reporting agency for non-Title 19/21 funds, even if a T/RBHA or provider has already taken corrective action. If there is evidence that suspected fraud has occurred, it will be reported.

The following is FAU criteria for determining if fraud or abuse is suspected and should be reported to AHCCCS/OPI or another reporting agency.

At least one of the following criteria must be met:

- Evidence of knowing and intentional:
 - Duplicate billings
 - Upcoding
 - Miscoding
 - Unbundling
 - Misrepresentation of services.
 - Billing for services not rendered.
 - Evidence of false or altered documents.
 - Evidence of missing documentation.
 - Evidence of irregularities following sanctions for same problem.
 - Evidence of unlicensed or excluded professional or facility at time of services.
 - Evidence of management knowledge of fraudulent activity.

- Reports of material irregularities by more than one reliable source.

And all of the following criteria must be met:

- Pattern of occurrence of irregularities.
- Actual loss to a government program.
- Loss would be considered material for nature and type of activity and provider.

Or at least one of the following criteria is met:

- Direct personal knowledge of fraudulent activity by known reliable individual.
- T/RBHA documented audit findings that show suspected fraud.
- Report showing evidence of suspected fraud from another government or law enforcement agency.

10. REQUIREMENT TO REPORT SUSPECTED FRAUD AND ABUSE

It is required that all suspected fraud or abuse be reported based upon statute, code, policy and contract. The following cites all refer to the necessity for DBHS, all T/RBHAs and providers to report suspected fraud or abuse:

- ARS 36-2918.01. Duty to report fraud or abuse; immunity.
- Arizona Administrative Code R9-22-511. Fraud or Abuse
- AHCCCS Policy and Procedures Manual, III.B. Reporting
- AHCCCS/ADHS Contract, Section D, Paragraph 52. Corporate Compliance
- Attachment A: Minimum ADHS Contract Provisions, 13. Fraud and Abuse
- Attachment A: Minimum ADHS Contract Provisions, Ad Hoc Reports, 1. Reports of Provider and Member Fraud and Abuse
- DBHS Provider Manual, 7.1.7. Procedures

The following is the Arizona statute that establishes the phrase “suspected fraud or abuse”:

- ARS 36-2918.01. Duty to report fraud or abuse; immunity.

The details of the above referenced cites are contained within Attachment C.

11. SUSPECTED FRAUD AND ABUSE REPORTING DEFINITIONS

For the purposes of the DBHS' compliance program, the DBHS Compliance Plan and the FAU's operational activities, the following definitions will be used for the terms used in reporting suspected fraud or abuse.

- *Immediately.* Defined by AHCCCS/OPI as 10 business days.
- *In Writing.* Defined by AHCCCS/OPI as a written report received by mail, faxed report with the original sent by mail or an e-mailed report with the original sent by mail.
- *Discovery.* Discovery is when it becomes clear that there is suspected fraud or abuse. Upon discovery, the 10-day reporting period begins. Discovery generally occurs when there is a reasonable belief that fraud or abuse is happening or has happened. Anyone can report fraud or abuse; based upon anything they believe shows suspected fraud or abuse.

12. REPORTING SUSPECTED FRAUD AND ABUSE BY T/RBHAS AND PROVIDERS

All instances of suspected fraud and abuse involving Title 19/21 funds must be reported within 10 business days of discovery directly to AHCCCS/OPI using their forms and procedures. DBHS requests that upon reporting suspected fraud and abuse to AHCCCS/OPI, a separate report is provided to DBHS/ FAU using FAU form and procedures.

All instances of suspected fraud and abuse involving non-Title 19/21 funds (state only funds) may be reported to the DBHS Compliance Audit Unit using their forms and procedures (if there is any chance that Title 19/21 funds may be involved, it must be reported to AHCCCS/OPI).

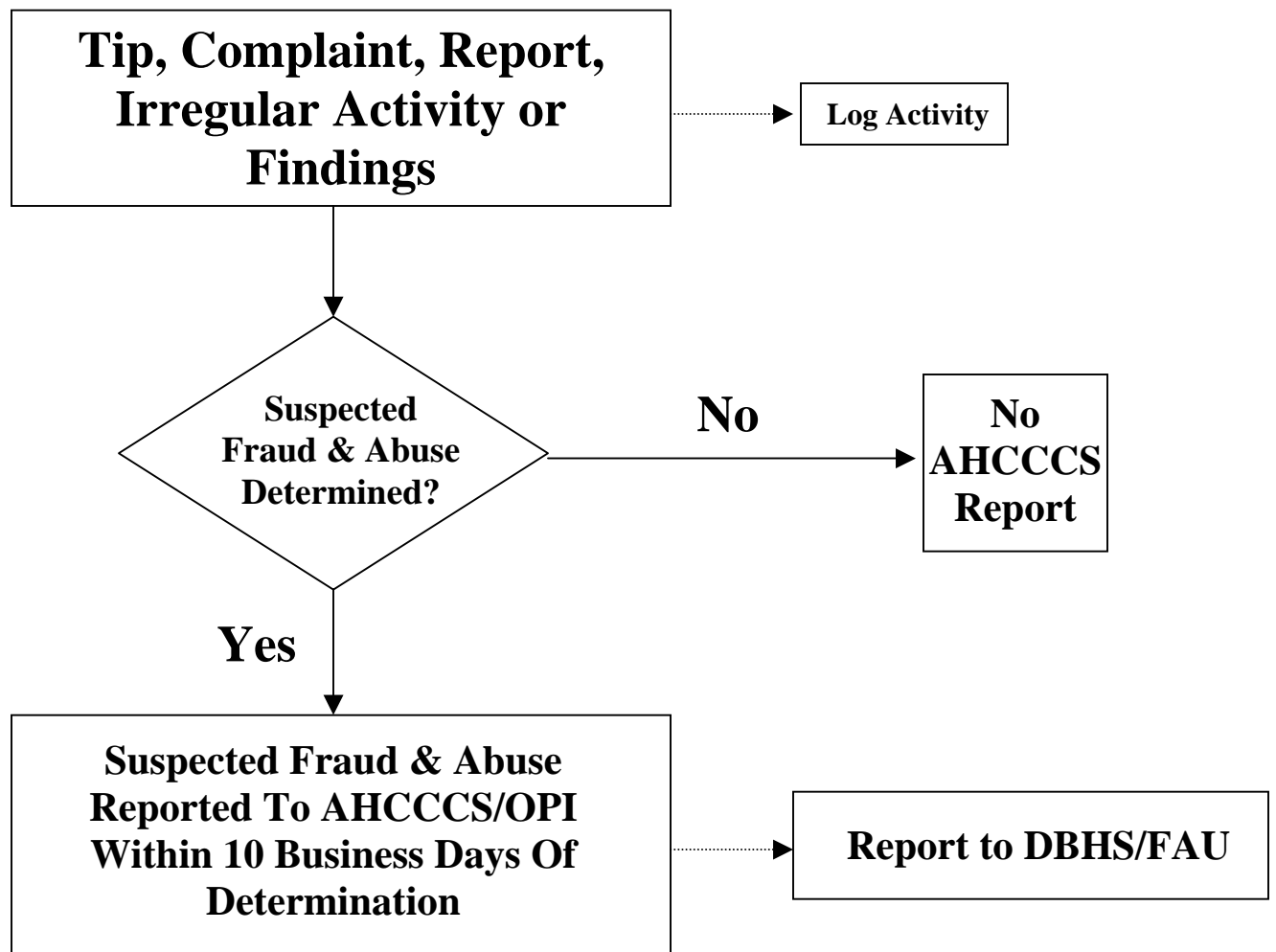
All instances of suspected fraud and abuse investigated and/or reported to, or by a T/RBHA, should be logged and tracked by the T/RBHA Compliance Officer. The log should include but is not limited to:

- Name and address of target.
- Date complaint received.
- Name and contact information of complainant.
- Nature of complaint (category of fraud and abuse).
- Potential loss amount and nature of funds (Title 19/21 and non-Title 19/21).
- Unique identifying number used by T/RBHA.
- Current status and final disposition.

In the event that a T/RBHA or provider suspects fraud or abuse, they should not disclose to the subject that a fraud or abuse report is being filed. The reporting T/RBHA or provider should not

continue to audit or investigate unless directed to do so by AHCCCS/OPI. Based upon the facts and circumstances of the case, the T/RBHA or provider may be advised by AHCCCS/OPI not to recapture any money lost from the fraudulent activity at that time. The T/RBHA or provider may take steps to prevent any further losses as long as it does not disclose the possibility of an investigation to the subject.

The following is a flowchart of how a T/RBHA or provider would report suspected fraud or abuse to AHCCCS/OPI.



13. REPORTING SUSPECTED FRAUD AND ABUSE BY DBHS

All instances of suspected fraud and abuse involving Title 19/21 funds must be reported within 10 business days of discovery directly to AHCCCS/OPI using their forms and procedures. All DBHS employee reports of suspected fraud or abuse will be reviewed and investigated by DBHS' FAU and a determination will be made regarding whether there is suspected fraud or abuse. Based upon this determination, a report will be prepared by the FAU and sent to AHCCCS/OPI. The FAU will coordinate all investigations of fraud or abuse reported to DBHS and will be the single point of contact for DBHS with AHCCCS/OPI.

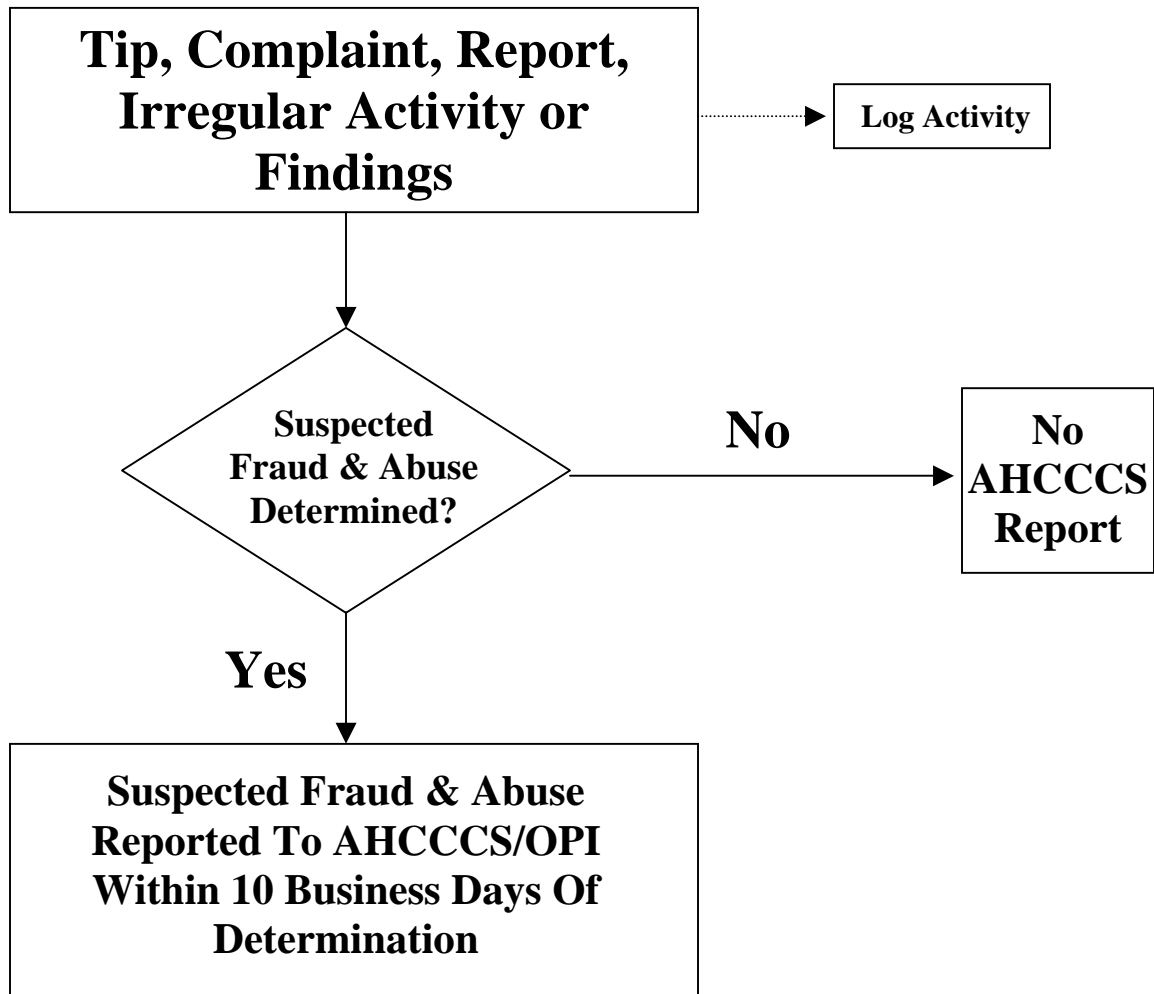
For instances of suspected fraud or abuse involving non-Title 19/21 funds (state only funds) reported to DBHS, the FAU will conduct an investigation and make appropriate referrals to law enforcement based upon all findings.

In the event that a T/RBHA, provider or client reports suspected fraud or abuse involving Title 19/21 funds directly to DBHS, the reporting party will be directed to report the suspected fraud or abuse immediately to AHCCCS/OPI in writing and to not regard their advisement of DBHS as fulfilling their reporting requirement. In these instances, the FAU will contact AHCCCS/OPI and advise them of the complainant's intent to report. The FAU will then follow-up with AHCCCS/OPI, within a reasonable period, to confirm that the T/RBHA or provider filed their report.

DBHS' FAU will maintain a log of all complaints received, reviews conducted, audits performed and referrals made to other agencies. The log will be used for tracking and trending analysis of fraud and abuse reported to DBHS. The log will contain:

- Name and address of target.
- Date complaint received.
- Name and contact information of complainant.
- Nature of complaint (category of fraud and abuse).
- Potential loss amount and nature of funds (Title 19/21 and non-Title 19/21).
- Unique identifying number or case number used by DBHS.
- Current status and final disposition.

The following is a flowchart of how DBHS would report suspected fraud or abuse to AHCCCS/OPI.



14. FAU SUSPECTED FRAUD AND ABUSE REPORTING - INTERNAL PROCEDURES

All complaints or referrals from DBHS employees are to be initiated on the approved Suspected Fraud and Abuse Report form. E-mails, letters or telephonic information is acceptable if the FAU Manager receiving the complaint obtains all of the required information.

Any suspected fraud report received from the public, a T/RBHA or provider will immediately be provided to AHCCCS/OPI and the reporting party will be instructed to make their report directly to AHCCCS/OPI.

All DBHS Suspected Fraud and Abuse Reports must come through the FAU Manager for review and assignment. DBHS staff, supervisors and managers are to submit complaints to the FAU Manager and any external complaints or referrals, regardless as to where they are originally received at DBHS, are to be submitted to the FAU Manager and the reporting party should be instructed to report the information directly to AHCCCS/OPI, if Title 19/21 funds are involved.

Complaints that are not on the Suspected Fraud and Abuse Report form or that do not have all of the required information may prevent the report from being reviewed accurately. All of the requested information is critical in being able to make an informed decision regarding the initial review of the report.

Fraud reports should be from the reporting party. If T/RBHAs, providers, clients or the public are the source of the report, they should be directed to contact AHCCCS/OPI directly, if Title 19/21 funds are involved. In these instances, the FAU will contact AHCCCS/OPI and advise them of the complainant's intent to report. The FAU will then follow-up with AHCCCS/OPI, within a reasonable period, to confirm that the T/RBHA or provider filed their report.

The FAU Manager will review all reports that have been received in a manner consistent with this procedure. The manager will make an initial determination as to whether the matter should have been addressed to FAU. All reports, referrals and complaints received by the FAU that should be addressed by the FAU will be logged and a case number assigned.

If the matter should not have been addressed to the FAU, the FAU Manager will determine the most correct destination in DBHS or ADHS for the report and forward it on.

If there appears to be material irregularities, based upon facts, the report will be assigned to a FAU auditor for review. This review will result in a determination as to whether the facts and circumstances meet the FAU criteria of "suspected fraud or abuse".

If, after a review by an auditor, it is determined that fraud or abuse is not suspected due to a lack of evidence or the matter does not meet FAU criteria for suspected fraud, the case will be closed.

In the event that a FAU auditor finds evidence to support a suspicion of suspected fraud or abuse during a random audit, a Suspected Fraud and Abuse Report form will be prepared and used to open a case.

15. AUTHORITY TO CONDUCT AUDITS OF CONTRACTORS AND SUBCONTRACTORS

DBHS establishes its authority to conduct audits, reviews and investigations of DBHS contractors and subcontractors from the following Arizona statutes and contract provisions:

- ARS 41-2548. Right to Audit Records
- ARS 41-2547. Right to Inspect Plant
- ARS 35-214. Inspection and Audit of Contract Provisions
- RBHA Contract - Uniform Terms and Conditions, Section C.3
- Special Terms and Conditions G. Compliance Provisions, 1.a. – d.

The details of the above referenced cites are contained within Attachment D.

16. DESK AUDITS AND REVIEWS

The FAU will monitor claims and encounter data on an ongoing basis in order to identify irregular activity, suspicious patterns and concerning trends. This monitoring will be in the form of standing analytical procedures and reports as well as purpose-specific and ad hoc analyses and reports conducted by FAU staff. The analyses and reports from these monitoring activities will be tracked and trended and reported to the Compliance Committee on a regular basis.

17. DBHS FRAUD AND ABUSE HOTLINE

In order to provide an anonymous and simple method for T/RBHAs, providers, clients, the public and DBHS employees to report suspected fraud and abuse, a dedicated, toll-free hotline has been established. Information regarding this hotline is to be provided on DBHS' website and posted in prominent places in the DBHS work area and by any other method or medium that will encourage individuals to report fraud and abuse. The hotline numbers are **866-563-4927** or **602-364-3758**.

The hotline will be answered by an FAU staff member if the call is received during business hours. A voice-mail recording will request the relevant information for those who call after business hours. All complaints, tips and reports received from the hotline will be recorded in the hotline log and reported to the FAU Manager.

18. FIELD AUDIT PROGRAM

All random field audits will be performed using the current FAU audit program. All FAU audit programs and audit procedures will be based upon the Government Auditing Standards as published by the Comptroller General of the United States. Auditors may make changes in the audit program based upon their initial findings or the facts and circumstances of the audit target, but any derivations from the established program must be documented and justified. Standard audit programs may be established and added to this manual as needed. The current audit program is included as Attachment E.

19. FIELD AUDIT PROCEDURES

The FAU will conduct field audits of T/RBHAs and providers in order to provide oversight of the contractors and subcontractors of DBHS. Random and targeted audits will be performed in order to deter and detect fraud and abuse. Targeted audits will be developed based upon the facts and circumstances of a complaint, desk audit finding or identification of a vulnerable area. All other audits will be random and conducted on a regular, ongoing basis. For the general procedures related to random audits see Attachment D.

20. FAU INVESTIGATIONS

All complaints, reports, tips and adverse audit findings will be investigated in order to determine if fraud or abuse is suspected. Each report will be assigned a case number and the FAU Manager will assign an auditor to conduct an investigation. All investigations resulting in a determination of suspected fraud or abuse will be reported to AHCCCS/OPI (Title 19/21 funds) or to other State or Federal authorities (non-Title 19/21 funds).

All investigations will be conducted using methods that will preserve the integrity of any evidence collected, provide documentation of all investigative activities related to the case and defer to AHCCCS/OPI on all matters relating to cases of suspected fraud and abuse. All investigations that result in no determination of fraud or abuse will be closed. Any investigation that finds problems with a certified or licensed professional or facility, regardless of suspected fraud or abuse findings, will result in the appropriate agency being notified of the verified problems.

21. DBHS FRAUD AND ABUSE AWARENESS PROGRAM AND TRAINING

The FAU will be responsible for providing fraud and abuse training to DBHS employees, managers, supervisors and to T/RBHA Corporate Compliance Officers on a regular basis. All new DBHS employees will receive mandatory initial training on identifying and reporting suspected fraud and abuse. Semi-annual training will also be made available to DBHS employees in a classroom or on-line setting. All DBHS management will receive training on fraud and abuse during a Management Team meeting at least once per year. See Attachment F for samples of employee and management training materials.

Fraud and abuse training will be provided to T/RBHA Corporate Compliance Officers at each quarterly Compliance Officers' meeting. FAU staff will attend professional training each year to maintain their understanding and expertise in the area of fraud and abuse detection, investigation and auditing. Awareness campaigns will be conducted during each year including posters and flyers for DBHS employees.

A quarterly fraud and abuse newsletter will also be published by the FAU and distributed to DBHS employees and T/RBHA Corporate Compliance Officers. The focus of the newsletter will be ways to deter and detect fraud and abuse. The newsletter will also contain information on emerging fraud and abuse trends as well as references to other relevant information sources and training programs.

22. FAU CASE FILE MANAGEMENT

All FAU case files will be created and maintained in a uniform and consistent manner. The goal is to have each case file in such a state that any auditor could pick up a case file and quickly determine the status and continue the audit or investigation.

Every complaint, referral, investigation or audit will be assigned a unique case number and a case name. The name will be the name of the suspect, target or subject of an audit. Each case that is opened will have a physical file created which will be kept in the secure file area.

Only FAU staff and the CFO will have access to the secure files. Open case files will not be left out of the secure file area after work hours and will never leave the building. Closed case files will be kept in a secure area and accessed only by authorized personnel.

All case related documents, forms, memos, reports, evidence, schedules, charts and correspondence will be kept in the case file. Any collected item too large to fit in the case file will be kept in a secure area and indexed to the case file.

Preliminary analyses, notes, drafts and all unfinished work products will be kept in the auditor's working files and will not be kept in the case file. Auditor working files will be maintained in a secure manner. All electronic data and files will be transferred to CD, labeled and placed in the case file when work on the data is substantially completed. Closed case files will not be destroyed. Closed files will be maintained for 12 months and then sent to archives. Case files will be organized and filed by fiscal year opened.

23. FAU COMMUNICATIONS AND REPORTS

All FAU communications, reports, memos and letters will follow standardized formatting and criteria. All communications that will leave the FAU must be reviewed and approved by the FAU Manager.

All information, data, records, documents and communications related to any and all reports, complaints, audits and investigations are to be maintained in a secure and confidential manner. Nothing related to a FAU report, complaint, review or audit is to be provided to the public. Information should not be shared with any DBHS personnel unless there is a documented need to know. Information and evidence can be provided to appropriate AHCCCS/OPI and law enforcement agencies as necessary.

All public information requests are to be directed to the DBHS Deputy Director's Office. Individuals inquiring about cases should be advised that there can be no confirmation or denial regarding any FAU activity.

Initial reviews, desk audits, special internal assignments and non-audit administrative activity will result in memos documenting activity and findings. Memos should be to the appropriate individual or to a case file. Memos may contain opinions, recommendations and ideas. Activity

involving any T/RBHAs or providers, not directly related to a complaint or case, should be documented in the form of a memo.

Investigative audit activity should be documented in investigative reports. Interviews, meetings, analyses, and all significant investigative activities should be recorded in the form of an investigative report. Investigative reports should contain facts, summary analyses, findings and salient points from interviews. Reports should not contain opinions, suppositions or recommendations for further action.

All letters will be on ADHS letterhead. Letters requesting documents, data, information or communicating with other company or agency management should be under the FAU Manager's signature. Letters to audit/investigative peers and complainants should be under the auditor's signature.

Samples of standardized reports, memos and communications along with all standard forms are contained in Attachment G.

24. FAU SECURITY

The activities, documents and communications of the FAU are to be maintained in a secure and appropriate manner. All complaints, suspected fraud reports or information relating to a suspected fraud or abuse issue are to be maintained in a confidential manner. Auditors are only to discuss information regarding any of their work with appropriate employees on a "need to know" basis.

No information regarding any investigations, audits, cases or preliminary reviews is to be discussed with or provided to anyone outside of the FAU without the approval of the FAU Manager. FAU staff is not to confirm or deny that a complaint or report has been received or that an audit or investigation is being conducted. The FAU Manager will approve all information sharing with other appropriate agencies.

All FAU staff will have Compliance Auditor credentials issued to them. These credentials are to be carried with them during business hours and when in the field. These credentials are for identification purposes to the public, T/RBHAs, providers, and other agencies. If these credentials are used inappropriately, they will be taken from the staff member and will be considered grounds for discipline or dismissal.

All case files and completed audit and preliminary review documents will be kept in the secure file area. All collected items and evidence will be kept in the secure file area. Each FAU staff member and the CFO will have access to the files.

No files, reports, documents or collected items are to be left out of the secure file at the close of business each day. All working files will be secured in the staff member's locked drawers at the close of business each day.

25. FAU DOCUMENT DESTRUCTION PROCEDURES

In order to prevent the accumulation of unnecessary closed-case related documents and to maximize storage space for open cases, the follow procedures are to be followed.

- All accumulated case documents are to be considered prior to completing a case closing form. Documents are to be considered based upon whether they are originals, copies, HIPAA protected, or if the case is being referred to AHCCCS/OPI or another agency.
- If the case is not forwarded for investigation, all originals are to be returned to the rightful custodian of records from which they were originally received. If the case is referred to AHCCCS/OPI or another qualified agency, all originals will be forwarded along with the case information.
- If the case is not forwarded for investigation, all copies are to be destroyed following the destruction procedure. If the number of copied documents is 100 or less, they should be kept in the case file. If the case is being referred to AHCCCS/OPI or another qualified agency, all copies will be forwarded along with the case information.
- A destruction or transfer form is filled out for each set of documents taken from the case file and the corresponding box is completed on the Collected Document List which notes the date, disposition and initials of auditor.
- All original work products (analyses, charts, schedules, reports, memos, letters, working papers and any type of summary) will be kept in the case file whether it is referred on or not. Copies of work products may be provided to AHCCCS/OPI or other qualified agencies, if requested and necessary.

The following is the procedure for destroying documents identified as needing to be disposed of:

- After the determination for destruction has been made regarding the documents, the auditor completes a document destruction form. The form contains a brief summary of the documents, how they were obtained, the reason they are being destroyed and the approving signature of the FAU Manager.
- The destruction form is kept in the case file with the Collected Document List.
- The documents are then placed in the confidential waste receptacle.

The following is the procedure for returning original documents to the originator or a referring agency:

- After the determination for return or referral has been made regarding the documents, the auditor completes a document transfer form. The form contains a brief summary of the documents, how they were obtained, the reason they are being transferred and the approving signature of the FAU manager.

- These documents are hand-delivered and the recipient signs the transfer form or the documents are sent to the recipient via U.S. Postal Service, Registered Return Receipt Requested.
- The transfer form is kept in the case file with the Collected Document List.

26. T/RBHA ADMINISTRATIVE REVIEWS

Annually, the FAU will participate in the DBHS administrative review of each T/RBHA as a provision of their contracts. The FAU will be responsible for section FO 1.0 which relates to Corporate Compliance Plans and Compliance Officers. Interrogatories will be conducted for all reviews and on-site interviews will be conducted as needed. The following table describes what the standard is and what is needed for the review.

Financial Operations		
Standard Code	Documents Needed BEFORE On-Site Review	Documents Needed ON DAY OF On-Site Review
FO 1.0 The T/RBHA has a Corporate Compliance Officer and Corporate Compliance Plan in place to prevent, detect and report fraud and abuse.	To be provided by T/RBHA: Evidence the T/RBHA has designated a Corporate Compliance Officer. Provide a copy of the Contractors' Compliance Plan, only if there have been revisions since the original submission date. Provide the job description for the Corporate Compliance Officer. Evidence that the T/RBHA conducts internal audits and/or monitoring of providers for fraud and abuse. Samples of the education and training provided to T/RBHA staff and providers.	Access to claims system. Staff available to run reports and queries. Any documentation and/or reports to substantiate interview content.

27. EQUIPMENT

The following equipment or items will be issued to FAU employees and they will be required to sign for each item. These items will be controlled and documented on a control log and as employees leave the FAU they will be required to return all issued equipment. All FAU equipment is to be used for authorized purposes and is to be safeguarded.

- Credentials

- Each member of the FAU will be issued Compliance Auditor credentials which identify them as an agent of the State of Arizona and an agent of ADHS/DBHS and authorizes them to have access to HIPAA related records and information within the scope of an audit.
- Keys
 - Each member of the FAU and the CFO will be issued a key to the secure files. These keys are not to be duplicated and they are not to be loaned to anyone for any reason. The FAU Manager or CFO may make duplicates as needed.

The FAU has equipment for use by the FAU staff. This equipment includes, but is not limited to:

- Laptop computer
- Portable printer
- Portable scanner
- Tape recorder
- Portable copier

These items are to be kept in the secure file area and used only for business related activities. If taken and used away from the DBHS office, these items are to be safeguarded and used only by FAU staff. Problems with any of this equipment should be reported to the FAU Manager immediately. These items may be loaned to other BFO personnel with the permission of the FAU Manager and documentation of the loaned equipment.

28. AHCCCS OPERATIONAL AND FINANCIAL REVIEW

Annually, AHCCCS will conduct an Operational and Financial Review (OFR) of DBHS in order to determine if there is organization, management and administrative systems in place cable of fulfilling all contract requirements including those areas related to fraud and abuse. DBHS' compliance program will be reviewed and rated on the following criteria:

- ADHS has a management level Corporate Compliance Officer with a job description that clearly outlines the responsibilities and authority of the position.
- ADHS has a designated Compliance Committee that is comprised of a minimum of a Compliance Officer, a budgetary official and other executive officials with the authority to commit resources.
- ADHS has a Compliance Officer on site available to all employees with designated and recognized authority to access records and make independent referrals to AHCCCS.

- ADHS conducts Corporate Compliance orientation, ongoing training and educational activities for its employees.
- The ADHS Corporate Compliance program ensures an effective confidential line of communication between the Compliance Officer and the ADHS employees.
- The ADHS Corporate Compliance program has well publicized compliance guidelines.
- The ADHS Corporate Compliance program contains provisions for internal monitoring.
- The ADHS Corporate Compliance program audits for fraud and abuse.
- The ADHS Corporate Compliance program contains provisions for prompt response to problems detected within the ADHS established timelines.
- ADHS meets ADHS established timelines.
- The ADHS Corporate Compliance Officer tracks suspected fraud and abuse cases to identify trends.
- ADHS analyzes information from suspected fraud and abuse cases to identify trends.
- ADHS takes appropriate action when a trend is identified.

During the OFR review, the FAU is required to provide certain documentation. The following are the items and information required during the most recent OFR as related to fraud and abuse:

- Staff in-service training documents.
- Corporate Compliance Committee minutes.
- Examples of actions taken to publicize the ADHS Corporate Compliance guidelines.
- Internal ADHS Corporate Compliance monitoring reports, including monitoring of internal timelines.
- Fraud and Abuse written log.
- Fraud and Abuse tracking and trending documentation.
- Evidence of actions taken when fraud and abuse trends are identified.

29. OPERATIONS AND PROCEDURES MANUAL UPDATES AND REVISIONS

The FAU Operations and Procedures Manual will be reviewed regularly and updated as needed. The FAU Manager is responsible for maintaining this manual and should coordinate with all functional areas of DBHS when there are proposed changes. All functional areas of DBHS should coordinate with the FAU Manager regarding any changes in their policies, procedures, contracts or reference documents that may reference or affect this manual.

All substantive changes to this manual must be reviewed and approved by the Compliance Committee chair.

Operations and Procedures Manual

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- A. DBHS Corporate Compliance Plan
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Attachment A

DBHS Corporate Compliance Plan

Attachment B

Understanding Medicaid Fraud and Abuse

UNDERSTANDING MEDICAID FRAUD AND ABUSE

The phrase “fraud and abuse” is used commonly when discussing corporate compliance programs in the world of Medicaid. The terms “fraud” and “abuse” are generally used together, as if they are interchangeable and essentially the same, but they are not. In order to effectively deter and detect fraud and abuse within Arizona’s public behavioral health system and to better enable auditors and investigators to perform their duties adequately, it is necessary to examine, define and understand what these terms mean and how they are different. The obvious and subtle differences between the terms fraud and abuse are critical in the determination of suspected fraud or abuse, the collection of evidence, the elements necessary to determine which statutes apply and, ultimately, the jurisdiction.

Fraud and abuse are defined as:

Fraud

“Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.” (42 CFR § 455.2)

Abuse

“Abuse means provider practices that are inconsistent with sound fiscal, business or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program.” (42 CFR § 455.2)

While the terms fraud and abuse used in relation to the Medicaid program have definitions outlined in CFR, they do not generally refer to specific, chargeable offenses. Specific civil or criminal statutes would need to be selected for prosecution based upon the facts, circumstances and evidence of the case. There are both state and federal charges of fraud, but there are several types of fraud that could be used and several non-fraud charges that could be used instead of, or in conjunction with the fraud charges. These criminal statutes comprise the action that can be taken if fraudulent activities are suspected.

There is no state or federal charge of abuse as it relates to the financial or program aspect of Medicaid (there is physical abuse of a Medicaid patient or client, but not financial), but there are several civil statutes that can be used to fine the offenders, seek a recovery of funds and restrict their participation in the Medicaid program. These civil statutes comprise the action that can be taken if abusive activities are suspected.

The terms fraud and abuse do not refer to specific offenses, but rather the nature of the statutes that can be used to prosecute or take action against a provider. If fraud were suspected (see CFR

definition of fraud), at least one of several federal or state criminal statutes listed in the table below would need to be charged. The charges chosen would be based upon the facts and circumstances of the case and specific elements would need to be established in order to conduct a successful prosecution of the case.

If abuse were suspected (see CFR definition of abuse), at least one of the federal or state statutes or rules listed in the table below would need to be charged or invoked. Based upon the statutes or rule chosen to charge the subject with, specific elements would need to be established in order to successfully obtain a civil judgment or monetary penalty or assessment.

The primary difference between fraud and abuse, as they relate to chargeable offenses, is the existence or ability to prove intent on the part of the suspect. In order to charge a fraudulent act it would normally require the ability to prove criminal intent. A lower level of intent or an absence of intent would normally lead investigators or prosecutors to pursue civil/administrative abuse charges.

Though not specific to the Medicaid Program, the Governmental Accounting Office's Governmental Auditing Standards 2003 Revision (GAS) make it clear that abuse is distinct from fraud. Several sections in the GAS state that, "When abuse occurs, no law, regulation, or provision of a contract or grant agreement is violated. Rather, abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances." (GAS 2003 Revision 4.19, 6.19, 7.25)

All complaints of suspected fraud or abuse discovered by DBHS, T/RBHA or provider, that involve Title 19/21 funds, are referred to the Arizona Health Care Cost Containment System – Office of Program Integrity (OPI). OPI opens all of their cases as criminal investigations. If their preliminary investigation indicates that the complaint is civil/administrative in nature, they can investigate and adjudicate the case entirely in-house. If their preliminary investigation determines that there is a criminal element to the case (a criminal statute could be charged), they can refer the case to the Arizona Attorney General's Office (AZ/AG) for investigation by their AHCCCS Fraud and Abuse Control Unit. If the AZ/AG's office finds an Arizona statute that can be charged, they will investigate and consider prosecution.

It is possible to pursue a case both criminally and civilly at the same time. While this presents certain difficulties related to the sharing of information and evidence, it can be done if circumstances justify it. It is conceivable that OPI could pursue a case against a provider civilly while the AZ/AG pursues a case against the same provider criminally.

If the AZ/AG's office finds that only federal criminal statutes apply, they can refer the case to one of several federal investigative agencies or the United States Attorney's Office. If the original complaint from DBHS, T/RBHA or provider involves only state funds (no Title 19/21), DBHS' Fraud and Abuse Unit investigates the complaint and refers it to the AZ/AG's office. If the matter appears to be criminal in nature, based upon state statutes, it would go to the Chief of the Criminal Division at the AZ/AG's office. If the matter appears to be civil in nature, it would be referred to DBHS's agency council for action.

Fraud		Abuse	
Statute	Title	Statute	Title
Title 18, U.S.C., § 286	Conspiracy to defraud Government with respect to claims	Title 18, U.S.C., § 1345	Injunctions against fraud
Title 18, U.S.C., § 287	False, fictitious or fraudulent claims	Title 31, U.S.C., § 3730	Civil actions for false claims
Title 18, U.S.C., § 371	Conspiracy to commit offense or to defraud United States	Title 42, U.S.C., § 1320a –7A	Civil monetary penalties
Title 18, U.S.C., § 669	Theft or embezzlement in connection with health care	A.R.S. § 36-2918	AHCCCS – Prohibited acts
Title 18, U.S.C., § 1001	Statements or entries generally (false statements)	R9-22-1101-1112	AHCCS - Civil monetary penalties and assessments for fraudulent claims
Title 18, U.S.C., § 1031	Major fraud against the United States		
Title 18, U.S.C., § 1035	False statements relating to health care matters		
Title 18, U.S.C., § 1341	Frauds and swindles (mail fraud)		
Title 18, U.S.C., § 1343	Fraud by wire		
Title 18, U.S.C., § 1347	Health care fraud		
Title 18, U.S.C., § 1518	Obstruction of criminal investigations of health care offenses		
Title 18, U.S.C., § 1956	Laundering of monetary instruments		
Title 18, U.S.C., § 1956	Engaging in monetary transactions in property derived from specified unlawful activity		
Title 18, U.S.C., § 1961 – 1968	Racketeering Influenced and Corrupt Organizations (RICO)		
Title 42, U.S.C., § 1320a-7B	Criminal penalties for acts involving Federal health care programs		
A.R.S. § 13-2310	Fraudulent schemes and artifices		
A.R.S. § 13-2311	Fraudulent schemes and artifices; willful concealment		
A.R.S. § 13-2317	Money laundering		

Attachment C

Requirement to Report Suspected Fraud and Abuse References

REQUIREMENT TO REPORT SUSPECTED FRAUD AND ABUSE REFERENCES

A.R.S. 36-2918.01. Duty to report fraud or abuse; immunity

- All contractors, subcontracted providers of care and non-contracting providers shall notify the Director or the Director's designee immediately in a written report of any cases of suspected fraud or abuse. The Director shall review the report and conduct a preliminary investigation to determine if there is sufficient basis to warrant a full investigation. If the findings of a preliminary investigation give the Director reason to believe that an incident of fraud or abuse has occurred, the matter shall be referred to the Attorney General.
- Any person making a complaint or furnishing a report, information or records in good faith pursuant to this section is immune from any civil liability by reason of that action unless that person has been charged with or is suspected of the fraud or abuse reported.
- Any contractor, subcontracted provider of care or non-contracting provider who fails to report pursuant to this section commits an act of unprofessional conduct and is subject to disciplinary action by the appropriate professional regulatory board or department.

Arizona Administrative Code R9-22-511. Fraud or Abuse

- A contractor, provider, or non-provider shall advise the Director or designee immediately, in writing, of any case of suspected fraud or abuse.

AHCCCS Policy and Procedures Manual, III.B. Reporting

- If a contractor discovers, or is made aware, that an incident of potential/suspected fraud and abuse has occurred, the contractor shall report, within 10 business days of the discovery, the incident to AHCCCS by completing the confidential AHCCCS Referral For Preliminary Investigation form.

AHCCCS/ADHS Contract, Section D, Paragraph 52. Corporate Compliance

- In accordance with A.R.S. 36-2918.01, ADHS, the subcontractors or providers are required to notify the AHCCCS/OPI immediately of all suspected fraud or abuse. ADHS agrees to promptly (within 10 business days of discovery) inform AHCCCS/OPI in writing of instances of suspected fraud or abuse. This shall include acts of suspected fraud or abuse that were resolved internally but involved AHCCCS funds, ADHS, subcontractors or providers.

Attachment A: Minimum ADHS Contract Provisions, 13. Fraud and Abuse

- If the contractor discovers, or is made aware that an incident of potential fraud or abuse has occurred, the contractor shall report the incident to ADHS or AHCCCS/OPI (DHBS is currently reviewing this section to ensure that suspected fraud is the term used consistently).

Attachment A: Minimum ADHS Contract Provisions, Ad Hoc Reports, 1. Reports of Provider and Member Fraud and Abuse

- As stated in Section D, Paragraph 52, Corporate Compliance, ADHS is required to report all cases of suspected (and actual) fraud and abuse by subcontractors, members or employees immediately upon discovery.

DBHS Provider Manual, 7.1.7. Procedures.

7.1.7. A. Reporting of fraud and abuse involving Title XIX/XXI funds or AHCCCS registered providers

- Upon becoming aware of a suspected incident of fraud or abuse, including a suspected incident committed by the T/RBHA, a T/RBHA or provider has 10 working days to inform the AHCCCS Office of Program Integrity of the suspected fraud or abuse in writing to the address below or by submitting an online form accessible at the link below:

AHCCCS Office of Program Integrity
801 E. Jefferson Street
Phoenix, Arizona 85034
<http://www.azahcccs.gov/Site/RptFraud.asp>

- In addition, T/RBHAs or providers should advise the ADHS/DBHS Corporate Compliance Officer of the report to AHCCCS by calling or writing to the contact information below:

ADHS/DBHS Corporate Compliance Officer
150 N. 18th Ave., Suite 280
Phoenix, Arizona 85007
(602) 364-3758 or 1-866-563-4927
Fax number: 602-364-4736

7.1.7. B. Reporting of fraud and abuse involving state-only funds, ADHS/DBHS registered providers or other providers

- Upon becoming aware of a suspected incident of fraud or abuse, including a suspected incident committed by the T/RBHA, a T/RBHA or provider has 10 working days to inform the ADHS/DBHS Corporate Compliance Officer by completing [PM Form 7.1.1, Suspected Fraud or Abuse Report](#) and faxing or mailing it to ADHS/DBHS. Reports of fraud or abuse may also be taken over the phone at (602) 364-3758 or 1-866-563-4927.

7.1.7-C. Reporting of fraud and abuse to the T/RBHA

- In addition to notifying ADHS or AHCCCS, behavioral health providers may need to notify their contracted T/RBHA of all suspected incidents of fraud or abuse. [T/RBHAs may insert specific instructions and include any forms providers must submit here.]

Attachment D

DBHS Authority to Conduct Audits of Contractors and Subcontractors

DBHS AUTHORITY TO CONDUCT AUDITS OF CONTRACTORS AND SUBCONTRACTORS

A.R.S. 41-2548. Right to Audit Records

- The state may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in section 41-2543 to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five years after the completion of the contract pursuant to section 35-214.
- The state is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five years after the completion of the prime contract pursuant to section 35-214 and by the subcontractor for a period of five years after the completion of the subcontract pursuant to section 35-214.

A.R.S. 41-2547. Right to Inspect Plant

- The state may at reasonable times inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded or to be awarded by this state.

A.R.S. 35-214. Inspection and Audit of Contract Provisions

- Except as provided in subsection C, in all contracts and subcontracts for the furnishing of goods, equipment, labor, materials or services to the state, or any of its agencies, boards, commissions or departments, there shall be a provision that all books, accounts, reports, files and other records relating to the contract shall be subject at all reasonable times to inspection and audit by the state for five years after completion of the contract. The contract provision shall also require that such records be produced at such state offices as designated by the state in the contract.
- Nothing in subsection A shall preclude a more stringent audit requirement agreed to by the parties in any state contract, and no rule of procedure shall limit the authority of the state to exercise its rights under this section.
- This section does not apply to contracts or subcontracts for the furnishing of goods, equipment, materials or services to any agency, board, commission or department of this state by another agency, board, commission or department of this state or a political subdivision of this state.

RBHA Contract - Uniform Terms and Conditions, Section C.3

- Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and six (6) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

Special Terms and Conditions G. Compliance Provisions, 1.a. – d.

- Audits, Surveys, Inspections and Reviews
 - If more than one GSA is awarded under this contract, there may be requirements for audit, survey, inspection and review activities by each GSA. In addition to the Uniform Terms and Conditions, Section C.3 Audit, the following terms and conditions shall apply.
 - Contractor and its Subcontractors shall comply with all Federal, State and local laws, rules, regulations, standards and executive orders governing performance of duties under this contract without limitation to those designated within this contract.
 - Contractor and its Subcontractors shall comply with all applicable AHCCCS Rules and Audit Guide, policies and procedures relating to the audit of Contractor's records, medical audit protocols, the inspection of Contractor's facilities, the survey of behavioral health recipients and providers and reviews.
 - At any time during the term of this Contract, Contractor and its subcontractors shall fully cooperate with DBHS, AHCCCS, the U.S. Department of Health and Human Services, the U.S. Office of Civil Rights, The Center for Medicaid and Medicare Services or any authorized representative of the state or federal governments and allow them:
 - Access to Contractor's and Subcontractors' staff and behavioral health recipients;
 - Access to, inspection and reproduction of books and records related to the performance of the Contract or Subcontracts; and,
 - Through on-site inspection, or other means, to evaluate the quality, appropriateness and timeliness of services performed under this Contract.
 - DBHS, its contractor, or other state or federal agency shall conduct the following audits, surveys, inspections and reviews.

- Audits may be conducted periodically to determine Contractor and Subcontractor's compliance with state and federal codes, rules, regulations and requirements. These audits include, but are not limited to, the following:
 - Auditor General Audits – Contractor and its subcontractors shall comply with and participate as required in the Performance Audit and other audits conducted by the Arizona Auditor General.
 - Other Federal and State Audits - The Contractor and its subcontractors shall comply with and participate as required in other federal and state audits including the audit of an inpatient facility.
- Encounter Validation Study - Contractor and its Subcontractors shall participate in the required Center for Medicaid and Medicare Services (CMS) data validation studies conducted by AHCCCS and other validation studies as may be required by DBHS. Any and all covered services may be validated as part of the studies. Center for Medicaid and Medicare Services data validation studies shall be conducted at least annually.
 - Per CMS requirement, AHCCCS conducts encounter validation studies of the Title XIX and XXI encounter submissions sent to AHCCCS from Contractor via DBHS and compares this to the information in the medical or other record to assess for timeliness, correctness and omissions of data. The ADHS/DBHS Program Support Procedures Manual contains specifications regarding this encounter validation study. AHCCCS has reserved the right to revise the study methodology, timeliness, and sanction amounts based on its review or as a result of consultations with CMS. Contractor shall be notified in writing of any significant change in study methodology.
 - All sanctions imposed against DBHS by AHCCCS as a result of data validation studies to DBHS from AHCCCS shall be passed on to Contractor according to the Special Terms and Conditions Paragraph H.4 Corrective Actions and Sanctions. DBHS shall notify Contractor in writing of the sanction amounts.
- Surveys
 - Behavioral Health Recipient Satisfaction Survey - The Contractor and its Subcontractors, as applicable, shall actively participate in the development and implementation of the behavioral health recipient biennial satisfaction survey. Participation may include, but is not limited to, attending planning meetings and assisting with the distribution of surveys to behavioral health recipients. The Contractor shall use findings from the Satisfaction Survey to improve care for behavioral health recipients.

- Inspections
 - General Inspections - Contractor agrees to make available at the office of Contractor, at all reasonable times, any of its records for inspection, audit or reproduction, by any authorized representative of the state or federal governments.
 - Inspections of Service Delivery Sites - Contractor and subcontractors shall allow an authorized representative of the state or federal government access to inspect any service delivery site for the purpose of determining the quality and safety of services being delivered. This shall be conducted at reasonable times unless the situation warrants otherwise.

- Reviews
 - Annual Administrative Review - DBHS shall conduct an Annual Administrative Review of the Contractor for the purpose of ensuring operational and financial program compliance for all programs, including but not limited to the following:
 - Compliance with state, federal and contractual requirements.
 - A review of clinical and business practices and policies.
 - A review of financial reporting systems.
 - The quality outcomes, timeliness, and access to healthcare services.
 - Any other operational and program areas identified by DBHS.
 - The reviews shall be conducted to identify areas where improvements can be made and make recommendations accordingly, monitor Contractor's progress toward implementing mandated programs and corrective action plans, and provide Contractor with technical assistance if necessary.
 - The type and duration of the Administrative Review shall be solely at the discretion of DBHS. In preparation for the on-site Administrative Review, Contractor shall fully cooperate with the DBHS Review Team by forwarding, in advance, policies, procedures, job descriptions, contracts, logs, and other information that DBHS may request. Contractor shall have all requested medical records available. Any documents not requested in advance by DBHS shall be made available upon request of the Review Team during the course of the review. Contractor personnel, as identified in advance, shall be available to the Review Team at all times during DBHS on-site review activities. While on-site, Contractor shall provide the Review Team with workspace, access to a telephone, electrical outlets and privacy for conferences.

- Contractor shall be furnished a copy of the Administrative Review Report and given an opportunity to comment on any review findings prior to DBHS publishing the final report. Recommendations made by the Review Team shall be implemented by Contractor to bring Contractor into compliance with Federal, State, AHCCCS, DBHS, and/or Contract requirements. DBHS may conduct follow-up Administrative Reviews to determine Contractor's progress in implementing recommendations and achieving program compliance. Follow-up reviews may be conducted at any time after the initial Administrative Review. Contractor shall submit the Status of Administrative Review Corrective Actions Report by June 15th of each year to the Office for Compliance.
- AHCCCS Operational and Financial Reviews of DBHS - Contractor and its Subcontractors shall comply with these Reviews and participate as required in the AHCCCS/ADHS contract in accordance with CMS requirements for the purpose of, but not limited to, ensuring operational and financial program compliance for Title XIX and Title XXI programs. The reviews identify areas where improvements can be made and make recommendations accordingly, monitor DBHS and Contractor's progress toward implementing mandated programs and provide DBHS with technical assistance if necessary. Contractor and its Subcontractors shall comply with all audit provisions as required by AHCCCS.
- Independent Case Review (ICR) - The Contractor shall make available records and other documentation, and ensure Subcontractor's participation in, and cooperation with, the ICR. This may include participation in staff interviews and facilitation of behavioral health recipient/family member and subcontractor interviews. The Contractor shall use findings from the ICR to improve care for enrollees.
- SAMHSA Core Reviews (SAPT and CMHS Block Grants) - The Contractor and its Subcontractors shall comply with and participate as required in DBHS and federal audits and Core Reviews of services and programs funded through the Substance Abuse Prevention and Treatment and Community Mental Health Services Performance Partnership Grants. Core Review findings shall be used to enhance and improve the delivery of Grant-required services for behavioral health recipients.

Attachment E

Field Audit Program

(Please note: audit Program is currently in a draft and will not be available until complete and approved.)

FIELD AUDIT PROGRAM

The general procedures for random field audits are as follows:

- Randomly select one provider from a RBHA for audit.
- Conduct pre-field audit desk review and analysis of provider.
- Send audit engagement letter and internal controls survey to provider with a copy sent to their T/RBHA.
- Establish provider contact person for audit, two business days prior to audit date.
- Receive and review internal controls survey.
- Conduct field audit following audit program.
- If there is a determination of suspected fraud or abuse involving funds during the field audit, no additional auditing will be conducted, the FAU Manager advised and a referral to AHCCCS/OPI will be made. No audit report of any kind will be distributed without the approval AHCCCS/OPI. If there is a determination of suspected fraud or abuse involving non-Title19/21 funds during the field audit, the audit plan will continue to be followed and the FAU Manager advised.
- Organize work papers and notes.
- Conduct follow-up analyses, confirmations and interviews.
- Prepare draft audit report. The audit report is limited to the findings related to the audit program steps and will not include opinions regard the existence or absence of fraud or abuse and will not provide recommendations for changes or improvements.
- Submit draft audit report along with working papers to FAU Manager for review.
- FAU Manager reviews audit report and makes recommendations for revisions, if necessary.
- Auditor revises draft audit report.
- Revised draft report (no working papers) is sent to the provider for review and comment.
- Provider has 10 business days to respond to FAU regarding draft report.
- Substantive, fact-based corrective comments from the provider are considered and incorporated into final report if necessary. Only corrections that can be proven and substantiated will be considered. All correspondence and documents received from the provider will be maintained in the audit working papers.
- Revised report (along with any new documentation) is provided to the FAU Manager for review.
- FAU Manager reviews revised report and makes recommendations for additional revisions, if necessary.
- Final report is distributed to the file, T/RBHA Compliance Officer and provider.

Attachment F

Fraud and Abuse Training Programs

Fraud and Abuse Information
False Claims Act and Whistleblower Protection Information

The Department of Behavioral Health Services (DBHS) currently provides fraud and abuse training to both new and existing employees. This training is intended to help employees recognize and report suspected fraud and abuse within their areas of responsibility. With the advent of the Deficit Reduction Act of 2005, Title 42, U.S.C., § 1396(a) was changed and now requires additional detailed fraud and abuse information be provided to all DBHS employees regarding the False Claims Act and employee whistleblower protections. This additional information will be provided in all future employee fraud and abuse training and is also now required to be included in the DBHS Employee Resource Guide as an employee reference source.

Please read and review the attached information and contact the Fraud and Abuse Unit Manager, Tim Stanley, 4-4781, if you have any questions. After reviewing this new section, please place it in your Employee Resource Guide.

What is the False Claims Act & Why is it Important?

Under the False Claims Act, [31 U.S.C. §§ 3729-3733](#), those who knowingly submit, or cause another person or entity to submit, false claims for payment of government funds are liable for three times the government's damages plus civil penalties of \$5,500 to \$11,000 per false claim.

The False Claims Act explicitly excludes tax fraud. Section 3729(e) states that the Act "does not apply to claims, records, or statements made under the Internal Revenue Code." If you wish to report tax fraud, please call the [IRS Fraud Hotline](#) at 800-829-0433.

***Qui Tam* Whistleblower Provisions**

The False Claims Act contains *qui tam*, or whistleblower provisions. *Qui tam* is a unique mechanism in the law that allows citizens with evidence of fraud against government contracts and programs to sue, on behalf of the government, in order to recover the stolen funds. In compensation for the risk and effort of filing a *qui tam* case, the citizen whistleblower or "relator" may be awarded a portion of the funds recovered, typically between 15 and 25 percent. A *qui tam* suit initially remains under seal for at least 60 days during which the Department of Justice can investigate and decide whether to join the action.

A Public-Private Partnership

Congress recognized that the Government alone, with its limited resources, was overmatched in the fight against rampant fraud. In response to widespread reports that the U.S. Treasury was being repeatedly bilked, in 1986 Congress rejuvenated a Civil War-era law—the False Claims Act. The 1986 amendments strengthened the False Claims Act's *qui tam* provisions, creating incentives for private citizens with evidence of fraud to commit their time and resources to supplement the Government's efforts. By doing so, Congress put into play a powerful public-private partnership for uncovering fraud against the federal fisc and obtaining the maximum recovery for American taxpayers.

Changing the Culture of Fraud

The False Claims Act is about more than money. It is also about discouraging fraud and changing the culture of corporate America. As Sen. Charles Grassley (R-IA) and Rep. Howard Berman (D-CA) have noted:

"Studies estimate the fraud deterred thus far by the qui tam provisions runs into the hundreds of billions of dollars. Instead of encouraging or rewarding a culture of deceit, corporations now spend substantial sums on sophisticated and meaningful compliance programs. That change in the corporate culture -- and

*in the values-based decisions that ordinary Americans make daily
in the workplace -- may be the law's most durable legacy."*

Who the Law Applies To

In general, the False Claims Act covers fraud involving any federally funded contract or program, with the exception of tax fraud.

While many *qui tam* actions in the late 1980s and early 1990s involved Department of Defense contracts, in recent years most *qui tam* actions have been used to fight Medicare fraud and fraud against other federally funded health care programs. A broad array of scenarios can constitute FCA violations. Some examples include the following:

- A contractor falsifies test results or other information regarding the quality or cost of products it sells to the Government;
- A health care provider bills Medicare for services that were not performed or were unnecessary, or;
- A grant recipient charges the Government for costs not related to the grant.

Types of Fraud Prosecuted Under the FCA

It is impossible to list all of the frauds that have been prosecuted under the False Claims Act, but the following list gives some idea of the scope of the false claims on the Government that have been uncovered to date:

- Billing for goods and services that were never delivered or rendered.
- Billing for marketing, lobbying or other non-contract related corporate activities.
- Submitting false service records or samples in order to show better-than-actual performance.
- Presenting broken or untested equipment as operational and tested.
- Performing inappropriate or unnecessary medical procedures in order to increase Medicare reimbursement.
- Billing for work or tests not performed.
- Billing for premium equipment but actually providing inferior equipment.
- Automatically running a lab test whenever the results of some other test fall within a certain range, even though the second test was not specifically requested.
- Defective testing - Certifying that something has passed a test, when in fact it has not.
- "Lick and stick" prescription rebate fraud and "marketing the spread" prescription fraud, both of which involve lying to the government about the true wholesale price of prescription drugs.
- Unbundling - Using multiple billing codes instead of one billing code for a drug panel test in order to increase remuneration.
- Bundling -- Billing more for a panel of tests when a single test was asked for.
- Double billing - Charging more than once for the same goods or service.
- Upcoding - Inflating bills by using diagnosis billing codes that suggest a more expensive illness or treatment.

- Billing for brand -- Billing for brand-named drugs when generic drugs are actually provided.
- Phantom employees and doctored time slips: Charging for employees that were not actually on the job, or billing for made-up hours in order to maximize reimbursements.
- Upcoding employee work: Billing at doctor rates for work that was actually conducted by a nurse or resident intern.
- Yield burning -- skimming off the profits from the sale of municipal bonds.
- Falsifying natural resource production records -- Pumping, mining or harvesting more natural resources from public lands that is actually reported to the government.
- Being over-paid by the government for sale of a good or service, and then not reporting that overpayment.
- Misrepresenting the value of imported goods or their country of origin for tariff purposes.
- False certification that a contract falls within certain guidelines (i.e. the contractor is a minority or veteran).
- Billing in order to increase revenue instead of billing to reflect actual work performed.
- Failing to report known product defects in order to be able to continue to sell or bill the government for the product.
- Billing for research that was never conducted; falsifying research data that was paid for by the U.S. government.
- Winning a contract through kickbacks or bribes.
- Prescribing a medicine or recommending a type of treatment or diagnosis regimen in order to win kickbacks from hospitals, labs or pharmaceutical companies.
- Billing for unlicensed or unapproved drugs.
- Forging physician signatures when such signatures are required for reimbursement from Medicare or Medicaid.

False Claims Act Recovery Examples

HCA -- \$731,400,000 under the False Claims Act

In December 2000, HCA The Healthcare Company (formerly known as Columbia HCA), the largest for-profit hospital chain in the United States, pled guilty to criminal conduct and agreed to pay more than \$840 million in criminal fines, civil penalties and damages for unlawful billing practices. Of this amount, \$731,400,000 was recovered under the False Claims Act. Under the settlement agreement, HCA's payment will resolve five allegations regarding the manner in which it bills the U.S. government and the states for health care costs. HCA's frauds on the taxpaying public included: billing for lab tests that were not medically necessary and not ordered by physicians, "upcoding" medical problems in order to get higher reimbursements for more serious medical issues, billing the government for advertising under the guise of "community education," and billing the government for non-reimbursable costs incurred in the purchase of home health agencies around the country. Note that the December 2000 agreement does not resolve allegations that HCA unlawfully charged the U.S. Government for the costs of running its hospitals, and that it paid kickbacks to physicians to get Medicare and Medicaid patients referred to its facilities.

HCA -- \$631,000,000 under the False Claims Act

In June 2003, HCA Inc. (formerly known as Columbia/HCA and HCA – The Healthcare

Company) agreed to pay the United States \$631 million in civil penalties and damages arising from false claims submitted to Medicare and other federal health programs. This settlement resolves HCA's civil liability for false claims including cost report fraud and the payment of kickbacks to physicians. In a separate administrative settlement with the Centers for Medicare & Medicaid Services (CMS), HCA agreed to pay an additional \$250 million to resolve overpayment claims arising from its cost reporting practices. Combined with the December 2000 settlement, the government has recovered \$1.7 billion from HCA, by far the largest recovery ever reached by the government in a health care fraud investigation.

HealthSouth -- \$325,000,000 under the False Claims Act (tie)

In December of 2004, HealthSouth Corporation, the nation's largest provider of rehabilitative medicine services, agreed to pay the United States \$325 million to settle allegations that the company systematically defrauded Medicare and other federal healthcare programs. Said Assistant Attorney General Peter Keisler, "HealthSouth's fraud on Medicare was driven both by longstanding business practices in its outpatient physical therapy business and improprieties in its inpatient rehabilitation business."

National Medical Enterprises-- \$324,200,000 under the False Claims Act

In July 1994, National Medical Enterprises Inc. was ordered to pay \$379 million in criminal fines, civil damages, and penalties as part of a settlement in a case involving alleged Medicare and Medicaid fraud at psychiatric and substance abuse hospitals in over 30 states. The charges involved kickbacks to doctors for making referrals to the hospitals. Of the total \$379 million settlement, \$324,200,000 represented recoveries under the False Claims Act, and the rest represents criminal and civil fines

The above information was obtained from the Taxpayers against Fraud (TAF) website (www.taf.org).

False Claims – Important Points

- Title 31, U.S.C. § 3729
- Any person who **knowingly** files a false claim for payment upon the Federal Government.
- Is civilly liable to Federal Government. for \$5,000 - \$10,000 + 3X the amount of damages + cost of recovery.
- **Knowingly**: actual knowledge of information, deliberate ignorance of truth or falsity of information or reckless disregard of the truth or falsity of information.
- *No proof of specific intent to defraud is required.*

Civil Actions for False Claims – Important Points

- Title 31, U.S.C. § 3730
- For violations of Title 31, U.S.C. § 3729 (false claims)
- Contains actions that can be taken by a private person (Qui Tam actions)

- Protects employees from discharge, demotion, suspension, threats, harassment or any other manner of discrimination regarding employment as a result of lawfully notifying officials of violations of the false claims law under Title 31, U.S.C. § 3730.

The False Claims and Statements; liability – Important Points

- Title 31, U.S.C. § 3802
- Any person who makes, presents, or submits or causes to be, a claim or statement that the person **knows** or has reason to know is –
 - False, fictitious or fraudulent, including false, written statements and written statements that omit material facts or is for payment for something not provided as claimed.
 - Is civilly liable to Federal Government. for not more than \$5,000 for each false claim or statement.
- **Knows:** actual knowledge of information, deliberate ignorance of truth or falsity of information or reckless disregard of the truth or falsity of information.
- This is an administrative action.
- *No proof of specific intent to defraud is required.*

Prohibited Personnel Practice (Arizona State personnel whistleblower protection)

A.R.S. 38-532

A. It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information of a matter of public concern by the employee to a public body which the employee reasonably believes evidences:

1. A violation of any law.
2. Mismanagement, a gross waste of monies or an abuse of authority.

B. The disclosure by an employee to a public body alleging a violation of law, mismanagement, gross waste of monies or abuse of authority shall be in writing and shall contain the following information:

1. The date of the disclosure.
2. The name of the employee making the disclosure.
3. The nature of the alleged violation of law, mismanagement, gross waste of monies or abuse of authority.
4. If possible, the date or range of dates on which the alleged violation of law, mismanagement, gross waste of monies or abuse of authority occurred.

C. An employee who knowingly commits a prohibited personnel practice shall be ordered to pay a civil penalty of up to five thousand dollars. The employee who committed the prohibited personnel practice, not the governmental entity, shall pay the civil penalty. Upon a finding that

an employee committed a prohibited personnel practice, the employer shall take appropriate disciplinary action including dismissal.

Fraud and Abuse Information
False Claims Act and Whistleblower Protection Information
Federal and State Statutes

The following are Federal statutes related to false claims and related whistleblower protections.

U.S. Code Title 31 § 3729. False claims

(a) Liability for Certain Acts.— Any person who—

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and Knowingly Defined.— For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information—

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) Claim Defined.— For purposes of this section, “claim” includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) Exemption From Disclosure.— Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section [552](#) of title [5](#).

(e) Exclusion.— This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

U.S. Code Title 31 § 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General.— The Attorney General diligently shall investigate a violation under section [3729](#). If the Attorney General finds that a person has violated or is violating section [3729](#), the Attorney General may bring a civil action under this section against the person.

(b) Actions by Private Persons.—

(1) A person may bring a civil action for a violation of section [3729](#) for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the Parties to Qui Tam Actions.—

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)

(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam Plaintiff.—

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government ^[1] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section [3729](#) upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section [3729](#), that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the

purposes of harassment.

(e) Certain Actions Barred.—

(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)

(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)

(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government ^[2] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

(f) Government Not Liable for Certain Expenses.— The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and Expenses to Prevailing Defendant.— In civil actions brought under this section by the United States, the provisions of section [2412 \(d\)](#) of title [28](#) shall apply.

(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

U.S. Code Title 31 § 3731. False claims procedure

- (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under section [3730](#) of this title may be served at any place in the United States.
- (b) A civil action under section [3730](#) may not be brought—
- (1) more than 6 years after the date on which the violation of section [3729](#) is committed, or
- (2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.
- (c) In any action brought under section [3730](#), the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
- (d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section [3730](#).

U.S. Code Title 31 § 3732. False claims jurisdiction

[How Current is This?](#)

- (a) **Actions Under Section 3730.**— Any action under section [3730](#) may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section [3729](#) occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.
- (b) **Claims Under State Law.**— The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section [3730](#).

U.S. Code Title 31 § 3733. Civil investigative demands

- (a) **In General.**—
- (1) **Issuance and service.**— Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or

commencing a civil proceeding under section [3730](#) or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

- (A) to produce such documentary material for inspection and copying,
- (B) to answer in writing written interrogatories with respect to such documentary material or information,
- (C) to give oral testimony concerning such documentary material or information, or
- (D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(2) Contents and deadlines.—

(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall—

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall—

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall—

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section [510](#) of title [28](#), authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

(b) Protected Material or Information.—

(1) In general.— A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws.— Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; Jurisdiction.—

(1) By whom served.— Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) Service in foreign countries.— Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service Upon Legal Entities and Natural Persons.—

(1) Legal entities.— Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Natural persons.— Service of any such demand or petition may be made upon any natural person by—

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of Service.— A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary Material.—

(1) Sworn certificates.— The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) Production of materials.— Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories.— Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral Examinations.—

(1) Procedures.— The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony

copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

(2) Persons present.— The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken.— The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony.— When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to custodian.— The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Furnishing or inspection of transcript by witness.— Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.—

(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against

provisions of part [V](#) of title [18](#).

(8) Witness fees and allowances.— Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) Custodians of Documents, Answers, and Transcripts.—

(1) Designation.— The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) Responsibility for materials; disclosure.—

(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Use of material, answers, or transcripts in other proceedings.— Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this

connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) Conditions for return of material.— If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) Appointment of successor custodians.— In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) Judicial Proceedings.—

(1) Petition for enforcement.— Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.—

(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in

subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery.—

(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Petition to require performance by custodian of duties.— At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) Jurisdiction.— Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section [1291](#) of title [28](#). Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) Applicability of federal rules of civil procedure.— The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) Disclosure Exemption.— Any documentary material, answers to written

under subsection (a) shall be exempt from disclosure under section [552](#) of title [5](#).

(I) Definitions.— For purposes of this section—

(1) the term “false claims law” means—

(A) this section and sections [3729](#) through [3732](#); and

(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term “false claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term “false claims law investigator” means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term “person” means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term “documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(6) the term “custodian” means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

(7) the term “product of discovery” includes—

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A).

U.S. Code Title 31 § 3802. False claims and statements; liability

(a)

(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(A) is false, fictitious, or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(C) includes or is supported by any written statement that—

(i) omits a material fact;

(ii) is false, fictitious, or fraudulent as a result of such omission; and

has a duty to include such material fact; or

(D) is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(A) the person knows or has reason to know—

(i) asserts a material fact which is false, fictitious, or fraudulent; or

(ii)

(I) omits a material fact; and

(II) is false, fictitious, or fraudulent as a result of such omission;

(B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such statement.

(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.

(b)

(1) Except as provided in paragraphs (2) and (3) of this subsection—

(A) a determination under section [3803 \(a\)\(2\)](#) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

(B) a determination under section [3803](#) of this title that a person is liable under subsection (a) of this section,

may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

The following are Arizona state statutes related to “whistleblower” protections.

23-1501. Severability of employment relationships; protection from retaliatory discharges; exclusivity of statutory remedies in employment

The public policy of this state is that:

1. The employment relationship is contractual in nature.
2. The employment relationship is severable at the pleasure of either the employee or the employer unless both the employee and the employer have signed a written contract to the contrary setting forth that the employment relationship shall remain in effect for a specified duration of time or otherwise expressly restricting the right of either party to terminate the employment relationship. Both the employee and the employer must sign this written contract, or this written contract must be set forth in the employment handbook or manual or any similar document distributed to the employee, if that document expresses the intent that it is a contract of employment, or this written contract must be set forth in a writing signed by the party to be charged. Partial performance of employment shall not be deemed sufficient to eliminate the requirements set forth in this paragraph. Nothing in this paragraph shall be construed to affect the rights of public employees under the Constitution of Arizona and state and local laws of this state or the rights of employees and employers as defined by a collective bargaining agreement.

3. An employee has a claim against an employer for termination of employment only if one or more of the following circumstances have occurred:

- (a) The employer has terminated the employment relationship of an employee in breach of an employment contract, as set forth in paragraph 2 of this section, in which case the remedies for the breach are limited to the remedies for a breach of contract.
- (b) The employer has terminated the employment relationship of an employee in violation of a statute of this state. If the statute provides a remedy to an employee for a violation of the statute, the remedies provided to an employee for a violation of the statute are the exclusive remedies for the violation of the statute or the public policy set forth in or arising out of the statute, including the following:
 - (i) The civil rights act prescribed in title 41, chapter 9.
 - (ii) The occupational safety and health act prescribed in chapter 2, article 10 of this title.
 - (iii) The statutes governing the hours of employment prescribed in chapter 2 of this title.
 - (iv) The agricultural employment relations act prescribed in chapter 8, article 5 of this title.

All definitions and restrictions contained in the statute also apply to any civil action based on a violation of the public policy arising out of the statute. If the statute does not provide a remedy to an employee for the violation of the statute, the employee shall have the right to bring a tort claim for wrongful termination in violation of the public policy set forth in the statute.

(c) The employer has terminated the employment relationship of an employee in retaliation for any of the following:

- (i) **The refusal by the employee to commit an act or omission that would violate the Constitution of Arizona or the statutes of this state.**
- (ii) **The disclosure by the employee in a reasonable manner that the employee has information or a reasonable belief that the employer, or an employee of the employer, has violated, is violating or will violate the Constitution of Arizona or the statutes of this state to either the employer or a representative of the employer who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information provided by the employee and**

to take action to prevent further violations of the Constitution of Arizona or statutes of this state or an employee of a public body or political subdivision of this state or any agency of a public body or political subdivision.

(iii) The exercise of rights under the workers' compensation statutes prescribed in chapter 6 of this title.

(iv) Service on a jury as protected by section 21-236.

(v) The exercise of voting rights as protected by section 16-1012.

(vi) The exercise of free choice with respect to nonmembership in a labor organization as protected by section 23-1302.

(vii) Service in the national guard or armed forces as protected by sections 26-167 and 26-168.

(viii) The exercise of the right to be free from the extortion of fees or gratuities as a condition of employment as protected by section 23-202.

(ix) The exercise of the right to be free from coercion to purchase goods or supplies from any particular person as a condition of employment as protected by section 23-203.

(x) The exercise of a victim's leaves right as provided in sections 8-420 and 13-4439.

(d) In the case of a public employee, if the employee has a right to continued employment under the United States Constitution, the Arizona Constitution, Arizona Revised Statutes, any applicable regulation, policy, practice, or contract of the state, any subdivision of the state or other public entity, or any ordinance of any political subdivision of the state.

38-532. Prohibited personnel practice; violation; reinstatement; exceptions; civil penalty

A. It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information of a matter of public concern by the employee to a public body which the employee reasonably believes evidences:

1. A violation of any law.

2. Mismanagement, a gross waste of monies or an abuse of authority.

B. The disclosure by an employee to a public body alleging a violation of law, mismanagement, gross waste of monies or abuse of authority shall be in writing and shall contain the following information:

1. The date of the disclosure.

2. The name of the employee making the disclosure.

3. The nature of the alleged violation of law, mismanagement, gross waste of monies or abuse of authority.

4. If possible, the date or range of dates on which the alleged violation of law, mismanagement, gross waste of monies or abuse of authority occurred.

C. An employee who knowingly commits a prohibited personnel practice shall be ordered by the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to section 38-534 to pay a civil penalty of up to five thousand dollars to the state general fund, a county general fund, a community college district unrestricted general fund or a school district maintenance and operation fund, whichever is appropriate. The employee who committed the prohibited personnel practice, not the governmental entity, shall pay the civil penalty. Upon a finding that an employee committed a prohibited personnel practice, the employer shall take appropriate disciplinary action including dismissal.

D. An employee or former employee against whom a prohibited personnel practice is committed may recover attorney fees, costs, back pay, general and special damages and full reinstatement for any reprisal resulting from the prohibited personnel practice as determined by the court.

E. An employee does not commit a prohibited personnel practice if he takes reprisal against an employee if that employee discloses information in a manner prohibited by law or the materials or information are prescribed as confidential by law.

F. This section may not be used as a defense in a disciplinary action where the employee is being disciplined for cause pursuant to section 41-770, except in a hearing on a complaint brought pursuant to this section by an employee or former employee who believes he has been the subject of a prohibited personnel practice as prescribed in this section as the result of a disclosure of information.

G. On request or at any time an employee alleges reprisal, an employer shall provide an employee who is subject to disciplinary or corrective action, suspension, demotion or dismissal with a copy of this section.

H. If an employee or former employee believes that a personnel action taken against him is the result of his disclosure of information under this section, he may make a complaint to an appropriate independent personnel board, if one is established or authorized pursuant to section 38-534 or to a community college district governing board or school district governing board. If an independent personnel board has not been established or authorized, or if a school district governing board or a community college district governing board does not hear and decide personnel matters brought pursuant to this section, the employee or former employee may make a complaint to the state personnel board. A complaint made pursuant to this subsection shall be made within ten days of the effective date of the action taken against him. The state personnel board, a school district governing board, a community college governing board or other appropriate independent personnel board, shall, pursuant to the rules governing appeals under section 41-785, make a determination concerning:

1. The validity of the complaint.

2. Whether a prohibited personnel practice was committed against the employee or former employee as a result of disclosure of information by the employee or former employee.

I. If the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to section 38-534 determines that a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, it shall rescind the personnel action and order that all lost pay and benefits be returned to the employee or former employee. The employee, former employee, employee alleged to have committed a prohibited personnel practice pursuant to subsection A of this section or employer may appeal the decision of the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to section 38-534 to the superior court as provided in title 12, chapter 7, article 6. Notwithstanding section 12-910, an appeal to the superior court under this subsection shall be tried de novo.

J. For purposes of a hearing by the state personnel board, a school district governing board, a community college district governing board or other appropriate independent personnel board conducted under this section, the employee, former employee, employee alleged to have committed the prohibited personnel practice pursuant to subsection A of this section and employer may be represented by counsel. In addition, representation by counsel in such hearings shall meet any other requirements stipulated by the state personnel board, a school district governing board, a community college district governing board or other appropriate independent personnel board or as required by law.

K. An employee or former employee may also seek injunctive relief as is otherwise available in civil actions.

L. This section shall not be construed to limit or extend the civil or criminal liability of an employee or former employee for any disclosure of information or to limit an employee's right to a separate pretermination hearing with the employee's employer, as provided by law.

M. An employee who knowingly makes a false accusation that a public officer or employee who has control over personnel actions has engaged in a violation of any law, mismanagement, a gross waste of monies or an abuse of authority is personally subject to a civil penalty of up to twenty-five thousand dollars and dismissal from employment by the employer.

Attachment G

FAU Forms and Reports

(Please note: Not all forms and reports will be represented in a public access version of this manual. Any excluded forms and reports are investigative in nature and are for confidential internal purposes only.)